

**VOLUNTARY CLEANUP CONTRACT
05-4806-NRP**

**IN THE MATTER OF
FORMER HARLEY CORPORATION CONSUMER BAG DIVISION SITE,
SPARTANBURG COUNTY
and
JOHN DODD ROAD INDUSTRIAL PROPERTIES, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and John Dodd Road Industrial Properties, LLC, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the property located at the intersection of Interstate 26 and John Dodd Road, Spartanburg, South Carolina. The Property includes 264 acres and is bounded generally by a railroad line to the west, I-26 to the east, John Dodd Road to the south, and wooded land to the north. The terms and conditions of this Contract shall be consistent with the "Information and Certification" submitted November 9, 2005 by Johnson Development Associates, Inc., on behalf of John Dodd Road Industrial Properties, LLC which is incorporated into this Contract and attached as Appendix A. A legal description of the Property is also included in Appendix A.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.

- A. "JDR" shall mean John Dodd Road Industrial Properties, LLC
- B. "Bona Fide Prospective Purchaser" shall mean a person, or a tenant of that person, who acquires ownership of a facility after the date of enactment of the Brownfields Amendments (January 11, 2002), and by a preponderance of the evidence establishes the following:
 - a. Disposal at the facility occurred prior to acquisition;

- b. The person made all appropriate inquiry into previous ownership and uses of the facility in accordance with generally accepted practices and in accordance with the new standards contained in CERCLA Section 101(35)(B);
 - c. The person provides all legally required notices with respect to the hazardous substances found at the facility;
 - d. The person exercises “appropriate care” with respect to the hazardous substances found at the facility by taking “reasonable steps” to:
 - i. Stop any continuing releases;
 - ii. Prevent any threatened future release; and
 - iii. Prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance;
 - e. The person provides full cooperation and access to the facility to those authorized to conduct response actions;
 - f. The person is in compliance with any land use restrictions and does not impede the effectiveness or integrity of any institutional control;
 - g. The person complies with any information request or administrative subpoena under CERCLA; and,
 - h. The person is not potentially liable for response costs at the facility or “affiliated” with any such person through:
 - i. Direct or indirect familial relationship, or
 - ii. Any contractual, corporate or financial relationship (excluding relationships created by instruments conveying or financing title or by contracts for sale of goods and services).
- C. “Contract” shall mean this Voluntary Cleanup Contract.
- D. “Department” shall mean the South Carolina Department of Health and Environmental Control.
- E. “Existing Contamination” shall mean any hazardous substances, pollutants or contaminants (as defined herein), present or existing on or under the Site as of the execution date of this Contract.

- F. "Hazardous Substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
- G. "Non-Responsible Party" shall mean any party which is neither:
- a. A responsible party at the time the voluntary cleanup contract is signed, nor,
 - b. A parent, subsidiary of, or successor to a responsible party. Non-Responsible Parties may include lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, and subsequent holders of a security interest.
- H. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- I. "Pollutant or Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or

assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

- J. "Property" shall mean the 264 acres identified on Tax Map 2-49-00-046.00 of the Site that is subject to ownership, prospective ownership, or possessory or contractual interest of a Responsible Party or a Non-Responsible Party.
- K. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- L. "Responsible Party" shall mean:
 - a. The owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility;
 - b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;
 - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances; and/or,
 - d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, as defined in CERCLA

Section 101 (38), or sites selected by such person from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

- M. "The Site" shall mean the facility located at the intersection of I-26 and John Dodd Road, Spartanburg, South Carolina, and all areas where a contaminant has been released, deposited, stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).
- N. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002).
- O. "Work Plan" shall mean the plan for additional response actions to be conducted at the Property as described in Paragraph 5 of this Contract.

2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. The ownership history of the Property is as follows:

Interstate 26 (Spartanburg) Associates	9/3/96 - present
Limited Partnership	
Roy F. Dooley	9/2/86 – 9/3/96
George H. Wood, Agent	9/14/84 – 9/2/86
George B. Nixon	11/15/79 – 6/20/89
Mancel C. Collins (189.53 acres)	unknown – 9/14/84
Matthew A. Hendersen, Trustee	unknown – 9/19/84
Lloyd D. Auten (24.6 acres)	
SC 60 Associates (14.2 acres)	unknown – 9/19/84
- B. Aerial photographs indicate the Property was undeveloped woodland from at least 1939 through the early 1970's. In a 1981 aerial photograph, the Harley Consumer Corporation Bag Division Site building is visible. The Harley Corporation Consumer Bag Division Site was used from 1973 to 1982 to print on

paper used in the manufacture of multi-wall bags. Historical records indicate that 30 tons of ink and solvent waste was generated via site processes per year. The waste was stored in 55-gallon drums that were reportedly transported off-site for disposal.

- C. The Site was listed as two separate CERCLA sites; the Harley Bag Drum Site and the Harley Corporation Consumer Bag Division Site. The Department conducted a preliminary assessment in March 1984 at the Harley Bag Drum Site. Two waste piles were identified; one located adjacent to a drum storage area near a knoll, and another adjacent to a drum storage area that appeared to be a ravine filled in with industrial trash and waste. The following April, Haztech removed the drums and collected samples from the first waste pit located near a knoll on the Property. In July and September of 1989, Westinghouse conducted a Phase I and a Phase II Environmental Site Assessment at the Property. The Phase II included the installation of a monitoring well, soil and groundwater sampling, a test pit excavation, asbestos sampling, and transformer oil sampling. Results of the sampling indicated that 1,1,1 trichloroethane was slightly elevated in the groundwater, but was below the EPA established maximum contaminant limit (MCL). Subsequently, the Bureau of Water (BOW) requested additional monitoring of the well. Monitoring continued for five sampling events until October 1992, when the BOW indicated that monitoring did not need to continue because nothing was detected in the well.
- D. The Department also conducted surface soil sampling at the Harley Corporation Consumer Bag Division Site in 1989. Four soil samples were collected near the warehouse building, and also at the northwest corner of the building for a background location. Results indicated that lead, chromium, cyanide, bis(2-ethylhexy) phthalate and phenol were present above background conditions. Additionally, Arochlor 1254 was detected in the background sample, indicating that that location might not have been a true background location.
- E. Subsequently, in 1992, Priester & Associates conducted a remedial activity to remove waste and soil from the second waste pile. Approximately 15,250 cubic

- yards of waste were excavated and removed from the site for disposal. In addition, one 55-gallon drum was removed from the site. Following the removal action, composite sampling of the excavated area was conducted. Five samples were collected and analyzed for full Toxicity Characteristic Leaching Procedure (TCLP) parameters. Results of the sampling indicated that levels of barium and lead were present but below regulatory standards for disposal purposes. No testing was conducted to determine if contaminant concentrations remained.
- F. In March 1995, the Department issued a Site Inspection Prioritization Report which summarized assessment and remedial activities conducted at the site, including potential receptors of site contaminants. The Harley Bag Drum Site was given a low priority for further action under the Federal Superfund program. The US EPA issued a Remedial Site Assessment Decision in May 1995 stating that the site did not qualify for further remedial site investigation under CERCLA.
- G. A Phase I Environmental Site Assessment (Phase I) was performed by S&ME in October 2005. The Phase I noted that at the time of site reconnaissance, the property was vacant of previously existing structures, and not being used. Several small areas of trash dumping were observed on separate portions of the site. In addition to the finding as stated above, several additional areas of concern were noted in the Phase I, including history of waste removal from an unspecified area approximately 400 yards north of the original fill area site and a truck maintenance area identified near the southwest corner of the site that have not been assessed.
- H. JDR is currently awaiting laboratory analytical results on samples collected as part of a Phase II Assessment. Work for the Phase II Assessment is as described in the document entitled "Work Plan, 264-acre Avanti Property, John Dodd Road, Spartanburg County, South Carolina, S&ME Project No. 1264-02-294J, " (October 2005) and modified by the "Environmental Phase II Site Assessment Work Plan Revision" (November 14, 2005). JDR shall submit all analytical data from the Phase II assessment when available from the laboratory.

- I. JDR intends to redevelop the Property as a light manufacturing or distribution facility.

3. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its Non-Responsible Party lenders, parents, subsidiaries, successors and assigns, and upon any successor agency of the State of South Carolina that may have responsibility for and jurisdiction over the subject matter of this Contract.

4. JDR is a South Carolina limited liability company, with its principal place of business located at 961 East Main Street, Spartanburg, South Carolina 29302. JDR is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property. JDR has had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.

5. JDR agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Property that is consistent with the technical intent of the National Contingency Plan. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the tasks. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the South Carolina certified analytical laboratory, and JDR's contact person for matters relating to this Contract. JDR will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify JDR in writing of any deficiencies in the Work Plan, and JDR shall respond in writing within thirty (30) days to the Department's comments. The workplan shall address the following tasks:

- A. Depending on the results of the Phase II assessment, additional samples of

surface soil (0-1 feet below ground surface) and subsurface soil (greater than two feet below ground surface) may be required to characterize the extent of a release of hazardous substances to soil on the Property. If notified by the Department that additional samples are required, soil sample locations shall be proposed in the Work Plan based on the site history and current conditions regarding potential contaminant sources. Analytical parameters shall be proposed in the Work Plan based on the former activities at or near each location and as specified below. A minimum of 20% of future samples shall be analyzed for all parameters on the EPA Target Analyte List and Target Compound List (TAL/TCL)]. Soil quality results shall be compared to EPA Region IX Preliminary Remediation Goals (PRGs) for industrial exposure and EPA Region IX Soil Screening Levels for Contaminant Migration to Groundwater (SSLs) using the dilution/attenuation factor (DAF) of 20 as a default or a site-specific value if agreeable to the Department. Soil samples shall be proposed at appropriate depths to detect contaminant releases in the immediate vicinity of potential contaminant sources including:

- a. Former Truck Repair Facility: If indicated by Phase II results, additional samples may be required to delineate the extent of contaminated surface and subsurface soils.
 - b. Former Harley Bag Building Area: If indicated by Phase II results, additional samples may be required to delineate the extent of contaminated surface and subsurface soils.
 - c. Former Drum and Waste Disposal Area: If indicated by Phase II results, additional samples may be required to delineate the extent of contaminated subsurface soils.
- B. Should the assessment results indicate that hazardous substances exist in soil on the Property in excess of appropriate risk-based standards or appropriate standards for contaminant migration to groundwater, JDR agrees to take reasonable steps, approved by the Department, to address the soil

contamination in a manner that is protective of human health and the environment.

- C. JDR shall assess groundwater quality and flow direction across the Property to determine the lateral and vertical extent of any hazardous substances present in groundwater on the Property. Assessment shall include installation and sampling of a minimum of five monitoring wells in sample locations that did not yield groundwater during the previous assessment. Additional wells may be required depending on the results of the Phase II Assessment and future groundwater monitoring to determine the extent, if any, of groundwater contamination on the Property. The Work Plan shall propose specific locations and construction of monitoring wells designed to detect any release of hazardous substances based on site history and present conditions regarding potential contaminant sources. All monitoring well groundwater samples shall be analyzed for all parameters on the EPA Target Analyte List and Target Compound List (TAL/TCL). Groundwater analytical results shall be compared to standards set forth in the South Carolina State Primary Drinking Water Regulations, R.61-58 or if not specified in R.61-58, to the EPA Region IX Preliminary Remediation Goals for Tap Water. Groundwater quality shall be assessed downgradient of each of the following identified potential contaminant source areas.
- a. Former Harley Bag Building Area: One monitoring well shall be installed downgradient and east of the former location of the building.
 - b. Former Drum and Waste Disposal Area: Four monitoring wells shall be installed to obtain samples of the topmost occurrence of groundwater in the vicinity of the waste disposal area. Three monitoring wells shall be installed downgradient of the fill area. One monitoring well shall be installed within the boundaries of the fill area. In the event that existing waste in the fill area preclude installation of this well because of risk of contaminating the groundwater, the well will also be installed in an area downgradient of the fill

area.

- D. Based on the results of the assessment, implementation of a Department approved groundwater monitoring program may be required. If a groundwater monitoring program is not required and there are no further needs for any groundwater monitoring wells, JDR shall abandon the monitoring wells in accordance with R.61-71 of the South Carolina Well Standards and Regulations.
- E. Depending on the results of the assessment, samples of surface water and sediments may be required. If notified by the Department that additional samples are required, JDR shall propose surface water body sample locations in the Work Plan based on the site history and current conditions regarding potential contaminant sources. Analytical parameters shall be proposed in the Work Plan based on the former activities at or near each location. Surface water quality results shall be compared to the values set forth in the SC Water Classifications and Standards R.61-68, based on consumption of either “water and organisms” or “organisms only” as applicable for the water body. Sediment samples shall be compared to the Ecological Screening Values as included in EPA Region 4 Ecological Risk Assessment – Supplement to RAGS (<http://www.epa.gov/region4/waste/ots/ecolbul.htm>).
- F. Should the assessment results indicate potential releases to surface water, additional samples of surface water and/or sediments may be required. JDR agrees to take reasonable steps, approved by the Department, to control releases of hazardous substances to surface water.
- G. Should the assessment results suggest that organic vapors may accumulate in buildings, including future buildings to be constructed on the property, the Work Plan shall propose methods to evaluate potential impacts to indoor air for the proposed property development. This evaluation may include collection of soil

gases or other methods deemed appropriate by the Department. The soil gas samples shall be collected and analyzed for site related constituents by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10⁻⁶ risk using appropriate attenuation factors. All screening levels and attenuation factors shall be consistent with the EPA OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance) <http://www.epa.gov/correctiveaction/eis/vapor.htm>.

- H. Should the Department determine that soil gas concentrations exceed risk based screening levels based on the EPA OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (<http://www.epa.gov/correctiveaction/eis/vapor.htm>), JDR shall take reasonable steps to ensure acceptable indoor air quality for industrial use (or other intended use) in accordance with a Department approved plan.
- I. Should the assessment results indicate the presence of Non-Aqueous Phase Liquids (NAPL) on the Property, JDR agrees to take reasonable steps, approved by the Department, to address this continuing source of groundwater contamination. For purposes of this Contract, solvent concentrations at 1% of their solubility limit shall indicate the presence of NAPL.

6. Attached to the Work Plan but under separate cover shall also be a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. One copy of this document should be submitted.

7. Within thirty days of Work Plan approval and once a quarterly thereafter, JDR shall submit to the Department's project manager a written progress report that must include the following:

- A. Actions taken under this Contract during the previous reporting period;

- B. Actions scheduled to be taken in the next reporting period;
- C. Sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and
- D. A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

8. As provided for by S.C. Code Ann. § 44-56-200 and S.C. Code Ann. § 44-56-750 (D) (2005), JDR shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice.

9. Two (2) years after the execution date of this Contract, JDR shall provide the Department with the following information concerning the new operation at the Property: the number of jobs created; the amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; total investment in the site; and any other information that demonstrates that the activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.

10. Subject to the provisions of Paragraph 18 of this Contract, nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, that the Department may have against any person, firm, corporation, potentially responsible party, or other entity not a signatory of this Contract.

11. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than JDR to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or

limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law. JDR acknowledges that it is acquiring property where response actions may be required.

12. Upon written notification to the Department, the rights and obligations of this Contract shall also inure to a new purchaser, lessee, parent, subsidiary, or successor, but only to the extent that the new purchaser, lessee, parent, subsidiary, or successor has never been a Responsible Party at the Site.

13. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). JDR shall ensure that a copy of this Contract is provided to any current lessee or sublessee on the Property as of the execution date of this Contract. JDR shall also ensure that any subsequent leases, subleases, assignments or transfers of the Property occurring during JDR's ownership of the Property are consistent with this Paragraph.

14. JDR shall preserve all drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, JDR shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.

15. JDR shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by JDR pursuant

to this Contract.

16. The Department and JDR recognize that public participation is an important component of the Voluntary Cleanup Contract in order to further public acceptance of the project. The Department and JDR will undertake necessary steps to foster opportunities for the public to be aware of the project. Specific functions of each signatory party to the Contract are as follows:

- A. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002) as outlined below:
 - a. Upon signature of this Contract by JDR, the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the affected community. A thirty-day period following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.
 - b. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be done solely at the Department's discretion.
 - c. A public informational meeting will be held if requested by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any time during the thirty-day comment period. In the event that a public meeting is deemed necessary, the Department will provide approximately two weeks advance notice of the meeting to the public and will extend the public comment period at least through the end of the day following the public meeting. The Department will not execute the contract

during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the site at any time after the contract is executed until the certificate of completion is issued.

- B. JDR agrees to enhance the public knowledge of the site response activities by:
- a. Erecting a sign(s) at each entrance onto the reference property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one day after publication of any public announcement about the site placed by the Department in any newspaper of general circulation in the community.
 - b. The sign will state "Voluntary Cleanup Project by John Dodd Road Industrial Properties, LLC under Voluntary Cleanup Contract 05-4806-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the NRP contract and contact information for a representative of JDR. The will also provide the Department's toll free telephone number (1-866-576-3432) and clearly indicate that it is a toll-free number. All required lettering on the sign must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the subject property.
 - c. Within 10 days after erecting the sign, JDR shall furnish to the Department photographs of the sign along with a site location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly-accessible road, waterway, etc. and should include an appropriately sized scale reference so that Department may determine the size of the sign and effectiveness of the lettering. JDR agrees to revise the sign if the Department determines the sign is not legible.
 - d. JDR must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract period until a certificate of completion

is issued on the site.

- e. In the event that any sign must be removed to accommodate building or grading activities, JDR shall replace the sign within two days. If the sign cannot be restored to the original location, JDR may relocate it to another location meeting the conditions specified above.

- C. All costs incurred by the Department for public participation [e.g., public notice(s), building and equipment rental(s) for public meetings, etc.] will be paid by JDR.

17. The Department and JDR agree that the following are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 and S.C. Code Ann. § 44-56-750 (2005): JDR, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.

18. The Department and JDR agree that the following are entitled to protection from third-party claims for equitable relief or damages relating to "existing contamination" at the Site, as provided by S.C. Code Ann. § 44-56-750 (2005): JDR, its Non-Responsible Party lenders, signatories, parents, subsidiaries and successors. This limitation on liability does not apply to any contamination caused by JDR or its lenders, signatories, parents, subsidiaries, or successors. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this contract is lawfully terminated by either party.

19. Upon successful completion of the terms of this Contract as referenced in Paragraph 5 above, JDR shall submit to the Department a written notice of completion. Once the Department acknowledges satisfactory completion of the Contract terms, the Department, under its authority to enforce CERCLA, 42 U.S.C. §§ 9601, et seq., pursuant to the HWMA,

S.C. Code Ann. § 44-56-200, will give JDR a Certificate of Completion that provides a covenant not to sue JDR, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns for Existing Contamination, except for releases and consequences that JDR causes. In consideration of this liability protection from the Department, JDR agrees not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

20. If hazardous substances in excess of residential standards exist at the Property after JDR has completed the actions required under this Contract, land use restrictions shall be defined in the Certificate of Completion and the Department shall enter into a restrictive covenant with JDR. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of JDR and witnessed, signed, and sealed by a notary public. JDR shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in Spartanburg County. The signed covenant shall be incorporated into this contract as an Appendix. With the approval of the Department, the restrictive covenant may be modified in the future if:

- A. Additional remedial activities are carried out which meet appropriate clean up standards at that time;
- B. A significant change in law requiring remediation occurs; or,
- C. Circumstances change such that the restrictive covenant would no longer be applicable.

21. JDR specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, JDR is responsible and liable for any and all contamination it causes or contributes to the Site. Should environmental contamination neither previously-

identified nor identified during the performance of response actions required under this Contract be discovered at the Site after the execution date of the Certificate of Completion, the burden is on JDR to demonstrate to the Department's satisfaction that the contamination was not caused by JDR.

22. JDR and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should JDR elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that no environmental or physical hazards exist at the Site as a result of JDR's actions. The Department may terminate this Contract only for cause, which may include but is not limited to the following:

- A. Events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract;
- B. Failure to complete the terms of this Contract; or ,
- C. Additional contamination of the Site caused by JDR.

23. If JDR provides the Department with false or incomplete information, or if JDR's business activities on the Property or use of the Property change such that they are inconsistent with the terms and conditions of this Contract, then the releases/contribution protection extended to JDR, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns, shall become null and void.

24. JDR acknowledges that the Department will not grant or will revoke liability protection if JDR acquires the Contract or a Certificate of Completion by fraud, misrepresentation, knowing failure to disclose material information, or failure to satisfactorily complete the approved Work Plan or terms of this Contract.

25. All correspondence which may or are required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by

- A. Regular U.S. mail,
- B. Certified or registered mail, postage prepaid, return receipt requested,
- C. By nationally recognized overnight delivery service company, or,
- D. By telephone facsimile addressed to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

The Department (including five (5) copies of all work plans and reports and one (1) copy of the Health and Safety Plan):

Craig Dukes
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

JDRD Benjamin Graves
Johnson Development Associates, Inc.
P.O. Box 3524
961 East Main Street
Spartanburg, South Carolina 29302

Any notice given hereunder shall be deemed delivered when, if sent by mail, the return receipt is signed or refusal to accept the notice is noted thereon or, if sent by recognized overnight courier when the notice is actually delivered or refused as reflected in the courier company's delivery records or if sent via facsimile upon receipt of confirmation by the sender that the facsimile has been received.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

DATE: _____
Columbia, South Carolina

BY: _____
Patrick T. (Pat) Walker, Chief
Bureau of Land and Waste Management

DATE: _____

BY: _____
Approved by Legal Office

DATE: _____

JOHN DODD ROAD INDUSTRIAL PROPERTIES, LLC

Signature

Date: _____

Printed Name and Title

APPENDIX A